

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

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| In the Matter of |) | |
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| Federal-State Joint Board on |) | |
| Universal Service |) | |
| |) | CC Docket No. 96-45 |
| Virgin Mobile USA, L.P. |) | |
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| Petition for Limited Designation as an |) | |
| Eligible Telecommunications Carrier |) | |
| in the State of Tennessee |) | |
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**PETITION FOR LIMITED DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER
IN THE STATE OF TENNESSEE**

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TABLE OF CONTENTS

| | | |
|------|--|----|
| I. | INTRODUCTION | 1 |
| II. | BACKGROUND | 2 |
| | A. Company Overview | 2 |
| | B. Lifeline Program | 3 |
| III. | THE TENNESSEE REGULATORY AUTHORITY HAS PROVIDED AN AFFIRMATIVE STATEMENT THAT IT DOES NOT REGULATE CMRS CARRIERS FOR ETC DESIGNATION PURPOSES..... | 5 |
| IV. | VIRGIN MOBILE REQUESTS ETC DESIGNATION IN ITS TENNESSEE SERVICE AREA FOR PARTICIPATION IN THE LIFELINE PROGRAM..... | 6 |
| | A. Virgin Mobile Requests ETC Designation in its Existing Service Area | 6 |
| | B. Virgin Mobile Requests ETC Designation for Participation in the Lifeline Program..... | 7 |
| | C. The Limited Designation Request is Consistent with Recent Precedent..... | 8 |
| V. | VIRGIN MOBILE SATISFIES THE REQUIREMENTS FOR DESIGNATION AS AN ETC | 9 |
| | A. Virgin Mobile is a Common Carrier | 9 |
| | B. Virgin Mobile Will Provide the Supported Services Through Resale..... | 10 |
| | C. Virgin Mobile Offers All of the Required Services and Functionalities | 10 |
| | 1. Voice Grade Access to the Public Switched Telephone Network..... | 10 |
| | 2. Local Usage. | 11 |
| | 3. DTMF Signaling or its Functional Equivalent..... | 11 |
| | 4. Single-Party Service or its Functional Equivalent..... | 11 |
| | 5. Access to Emergency Services | 12 |
| | 6. Access to Operator Services | 12 |
| | 7. Access to Interexchange Services..... | 12 |
| | 8. Access to Directory Assistance..... | 12 |
| | 9. Toll Limitation..... | 12 |
| | D. Advertising of Supported Services | 13 |
| VI. | DESIGNATION OF VIRGIN MOBILE AS AN ETC WOULD PROMOTE THE PUBLIC INTEREST | 13 |
| | A. Goals of the Communications Act..... | 13 |
| | B. Impact on the Universal Service Fund..... | 15 |
| VII. | ANTI-DRUG ABUSE CERTIFICATION..... | 16 |

| | |
|-----------------------|----|
| VIII. CONCLUSION..... | 17 |
|-----------------------|----|

SUMMARY

Virgin Mobile USA, L.P. (“Virgin Mobile”) is seeking limited designation as an Eligible Telecommunications Carrier (“ETC”) in the State of Tennessee, pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (“Act”), solely for purposes of offering services supported by the Universal Service Fund’s (“USF”) Lifeline program. Virgin Mobile is a Mobile Virtual Network Operator that purchases wireless network services on a wholesale basis from Sprint Nextel, which provides the nationwide wireless backbone and infrastructure for Virgin Mobile’s service. While the Act reserves the authority to designate entities as ETCs to state public utility commissions (“PUCs”), the Federal Communications Commission (“Commission”) may perform ETC designations for entities not subject to the jurisdiction of a state PUC pursuant to section 214(e)(6) of the Act. The Tennessee Regulatory Authority has provided an affirmative statement that it does not exercise jurisdiction over wireless providers for purposes of ETC designation. Accordingly, pursuant to section 214(e)(6), the Commission has the necessary authority to designate Virgin Mobile as an ETC in the State of Tennessee.

Virgin Mobile meets all of the necessary requirements under section 214(e)(1) for the limited ETC designation requested herein. Through its arrangement with Sprint Nextel, Virgin Mobile has the ability to offer all of the services and functionalities supported by the USF and set forth in section 54.101(a) of the Commission’s rules. Virgin Mobile understands that section 214(e)(1)(A) of the Act requires an ETC to offer USF-supported services over its own facilities or a combination of its own facilities and the resale of another carrier’s services. Virgin Mobile has sought forbearance from enforcement of this facilities requirement to permits its designation as an ETC. Virgin Mobile respectfully requests that the Commission promptly approve the

instant request for limited ETC designation, along with its Petition for Forbearance, to enable Virgin Mobile to rapidly provide Lifeline services to qualifying Tennessee customers.

Designation of Virgin Mobile as an ETC in Tennessee would promote the public interest since it would provide qualifying Tennessee customers with lower prices and higher quality wireless services. Many low-income customers in Tennessee have yet to reap the benefits from the intensely competitive wireless market because of financial constraints, poor credit history, or intermittent employment. Virgin Mobile's prepaid service offerings are ideally suited to provide these customers with reliable and cost-effective wireless services. As an ETC, Virgin Mobile would be able to provide discounted and affordable services to these consumers—many of whom are among the intended beneficiaries of USF support.

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**PETITION FOR LIMITED DESIGNATION AS AN
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IN THE STATE OF TENNESSEE**

I. INTRODUCTION

Virgin Mobile USA, L.P. (“Virgin Mobile”), by undersigned counsel and pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (“Act”), and section 54.201 of the regulations of the Federal Communications Commission (“FCC” or “Commission”), hereby petitions the Commission for limited designation as an eligible telecommunications carrier (“ETC”) in the State of Tennessee. Virgin Mobile seeks ETC designation in Tennessee only for purposes of participation in the Universal Service Fund’s (“USF”) Lifeline program, and does not request designation to offer supported services in high-cost areas.

Since the Tennessee Regulatory Authority (“Authority”) lacks jurisdiction to consider Virgin Mobile’s request for designation as an ETC, the Commission, under section 214(e)(6) of

the Act, has the necessary jurisdictional authority to consider and grant the instant request.¹ As more fully described below, Virgin Mobile satisfies the requirements for designation as an ETC in Tennessee and has the ability to offer all of the services and functionalities supported by the USF throughout its designated Tennessee service area. Grant of Virgin Mobile's request, therefore, will promote the public interest by providing Tennessee customers with lower prices and higher quality wireless services.

II. BACKGROUND

A. Company Overview

Virgin Mobile was established as a joint venture between Sprint Nextel and Sir Richard Branson's Virgin Group. Sprint Nextel provides the nationwide wireless backbone for Virgin Mobile's service, including all network infrastructure and wireless transmission facilities. Virgin Mobile purchases wireless network services on a wholesale basis at a price based on Sprint Nextel's cost of providing these services plus a specified margin. As a Mobile Virtual Network Operator ("MVNO"), the company manages and markets all aspects of the customer experience, including pricing, handset selection, service offers, entertainment applications and marketing materials. Virgin Mobile's simple and straightforward pay-as-you-go, or prepaid, pricing, along with its differentiated service offerings and high-quality customer service, have redefined the prepaid wireless marketplace and brought significant competition to the overall wireless industry. Virgin Mobile's value proposition enables customers to select among an array of flexible service plans that allow them to pay for minutes as they use them or purchase monthly buckets of minutes in advance. The company also offers text and multimedia messaging and an

¹ See 47 U.S.C. § 214(e)(6).

array of mobile entertainment and information services, including music, games and graphics on all handsets

Unlike many carriers, Virgin Mobile does not impose credit checks or long-term service contracts as a prerequisite to obtaining service. Many customers are from lower-income backgrounds and did not previously have access to an affordable and high-quality wireless service because of financial constraints or poor credit. Virgin Mobile estimates that approximately one-third of its present customers are new to wireless services and 35 percent have an annual household income below \$35,000. Many of these customers also use Virgin Mobile's services sparingly, with a substantial percentage spending less than \$10 per month. Without question, prepaid wireless offerings have become an essential service option for lower-income customers, providing them with value for their money, access to emergency services on wireless devices and a reliable means of contact for prospective employers or social service agencies.² By marketing and expanding the availability of appealing wireless services to consumers otherwise unable to afford them, and those previously ignored by traditional carriers, Virgin Mobile has effectively expanded access to wireless services.

B. Lifeline Program

Universal service has been a fundamental component of U.S. telecommunications policy since adoption of the Act over 70 years ago. Section 254 of the Act embodies the Commission's historical commitment to the concept of universal service, especially for low-income consumers. Section 254(b) designates the principles upon which the Commission shall base its policies for the promotion and advancement of universal service. These principles require the Commission

² A survey of Virgin Mobile customer usage patterns indicated that state and city welfare agencies are among the most frequently contacted by customers.

to ensure that all consumers, including low-income consumers, have access to telecommunications services at comparable and affordable rates.³ The Lifeline program is one of several USF support mechanisms that furthers the goals contained in section 254. Lifeline support is designed to reduce the monthly cost of telecommunications services for lower-income consumers by providing them with significant discounts for service.

The Commission has credited the Lifeline program for gradually increasing telephone penetration rates, especially among low-income consumers. Despite the steady rise in penetration rates, however, the FCC has noted that “there is more that we can do to make telephone service affordable for more low-income households” and targeted the low Lifeline participation rate as one area for improvement.⁴ Commission concerns regarding the underutilization of the Lifeline program have existed since its inception.⁵ To increase awareness of the program, the Commission has expanded the qualifying criteria and adopted broader outreach guidelines, requiring carriers to better advertise the availability of Lifeline services. Through these actions, the Commission has sought to increase Lifeline participation because “improve[d] participation in the Lifeline program ... would increase telephone subscribership and/or make rates more affordable for low-income households.”⁶

³ See 47 U.S.C. § 254. Section 254(b)(3) of the Act requires the Commission to determine whether “consumers in all regions of the Nation, *including low-income consumers* and those in rural, insular, and high cost areas ... have access to telecommunications [services]” [emphasis added] 47 U.S.C. § 254(b)(3).

⁴ See *In the Matter of Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8305 (2004) (“*Lifeline Order*”). According to the Commission’s own statistics, only one-third of households eligible for Lifeline assistance actually participated in the program just a few years ago. See *id.*

⁵ See *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8972 (1997).

⁶ See *Lifeline Order* at 8312.

III. THE TENNESSEE REGULATORY AUTHORITY HAS PROVIDED AN AFFIRMATIVE STATEMENT THAT IT DOES NOT REGULATE CMRS CARRIERS FOR ETC DESIGNATION PURPOSES

Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific universal service support.”⁷ The Act reserves the authority to designate entities as ETCs to state public utility commissions (“PUCs”). Pursuant to section 214(e)(6), however, the Commission may designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a state commission.”⁸ The Commission has established that a carrier must demonstrate that it “is not subject to the jurisdiction of a state commission” before it may consider an application for ETC designation.⁹ The Commission also has stated that any carrier seeking ETC designation from it must provide the Commission with an “affirmative statement” from the state PUC that it lacks jurisdiction to perform the ETC designation.¹⁰

The Authority has affirmatively declined to exercise jurisdiction over wireless providers for ETC designation purposes. In an April 2003 Order, the Authority conclusively determined that it lacked jurisdiction over wireless carriers for purposes of ETC designation requests.¹¹ The Order, enclosed as Exhibit 1, meets the Commission’s requirements for an “affirmative statement” from a state PUC that it lacks the necessary jurisdiction over CMRS providers to

⁷ 47 U.S.C. § 254(e).

⁸ See 47 U.S.C. § 214(e)(6).

⁹ See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 29947, 29948 (1997).

¹⁰ See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12264 (2000).

¹¹ See Exhibit 1.

perform ETC designations. Accordingly, Virgin Mobile requests that the Commission exercise its authority under section 214(e)(6) and determine that Virgin Mobile is “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”¹²

IV. VIRGIN MOBILE REQUESTS ETC DESIGNATION IN ITS TENNESSEE SERVICE AREA FOR PARTICIPATION IN THE LIFELINE PROGRAM

A. Virgin Mobile Requests ETC Designation in its Existing Service Area

As a non-rural carrier, Virgin Mobile is required to describe the areas for which it requests ETC designation. The company requests ETC designation for its entire Tennessee service area, which encompasses nearly every postal zip code in the State.¹³ Virgin Mobile understands that its service area overlaps with several Tennessee rural carriers’ service areas, but maintains that the public interest factors described below justify its designation in these service areas, especially since it only seeks ETC designation for purposes of participation in the Lifeline program. Virgin Mobile’s authorized service area encompasses the service areas of the following non-rural telephone companies:

BellSouth Telecommunications, Inc.

Virgin Mobile’s authorized service area encompasses the service areas of the following rural telephone companies:

Ardmore Telephone Company

CenturyTel of Adamsville

CenturyTel of Claiborne

¹² 47 U.S.C. § 214(e)(6).

¹³ Virgin Mobile’s request for ETC designation does not encompass any federally-recognized tribally-owned lands.

CenturyTel of Ooltewah-Collegedale
Concord Telephone Exchange, Inc.
Crockett Telephone Company
Frontier Communications of Tennessee
Frontier Communications of the Volunteer State
Humphreys County Telephone Company
Loretto Telephone Company
Millington Telephone Company, Inc.
Peoples Telephone Company
Tellico Telephone Company
Tennessee Telephone Company
United Telephone – Southeast
United Telephone Company, Inc.
West Tennessee Telephone Co.

B. Virgin Mobile's Limited ETC Designation Request Only Seeks Authority to Participate in the Lifeline Program

Virgin Mobile requests ETC designation in Tennessee for the sole purpose of participating in the Lifeline program. Virgin Mobile will not seek to provide supported services in high-cost areas. The instant request to participate in the Lifeline program is consistent with the Commission's requirements for ETC designation. Limited designation of Virgin Mobile as an ETC would promote the goals of universal service by offering the many benefits of USF-supported services to low-income customers in the State of Tennessee. The Lifeline services provided by Virgin Mobile will contain many features specifically designed for qualifying low-

income customers, who currently lack appealing and affordable options for wireless services. Indeed, Virgin Mobile's Lifeline plans will provide affordable and convenient wireless services to qualifying Tennessee customers, many of whom are otherwise unable to subscribe to wireless services.

C. The Limited Designation Request is Consistent with Recent Precedent

The instant request for designation to participate in the Lifeline program is consistent with the Commission's recent decision conditionally designating TracFone Wireless as an ETC in several states.¹⁴ In its decision, the Commission determined that TracFone's request satisfied all of the necessary eligibility requirements and that designation would serve the public interest.¹⁵ The Commission specifically noted in the *TracFone ETC Order* that designation of prepaid wireless providers as ETCs will provide a variety of benefits to low-income consumers, including increased consumer choice, high-quality service offerings and access to emergency services on wireless devices.¹⁶

Virgin Mobile requests that the Commission expeditiously process its pending ETC applications so that it can quickly join TracFone in providing qualifying lower-income customers with affordable USF-supported wireless services. Designation of prepaid wireless providers such as TracFone and Virgin Mobile as ETCs is a significant step towards ensuring that all

¹⁴ See *In the Matter of Federal-State Joint Board on Universal Service, TracFone Wireless, Inc., Petitions for Designation in the States of Alabama, Connecticut, Delaware, Florida, Tennessee, New Hampshire, New York, Tennessee, Pennsylvania, Tennessee, Virginia, and Washington D.C.*, Order, FCC 08-100 (rel. April 11, 2008) ("TracFone ETC Order").

¹⁵ The Commission had previously granted TracFone forbearance from the facilities requirement for ETC designation, permitting TracFone to offer the supported services via resale only. See *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, Order, 20 FCC Rcd 15095 (2005).

¹⁶ See *TracFone ETC Order* at ¶ 15.

customers, especially low-income customers, share in the many benefits associated with access to affordable wireless telecommunications services. In a deteriorating economy, many existing wireless customers have to forego wireless services because they can no longer afford them. Designation of ETC status to prepaid wireless carriers like TracFone and Virgin Mobile should help to close the widening gap for wireless services and provide low-income customers with the significant advantages associated with access to wireless services. As noted in a recent study sponsored by the Massachusetts Institute of Technology's Legatum Center for Development and Entrepreneurship and the New Millennium Research Council, low-income customers receive significant economic and social benefits from wireless services, including enhanced productivity, increased economic opportunity, and broader access to emergency and safety services.¹⁷

V. VIRGIN MOBILE SATISFIES THE REQUIREMENTS FOR DESIGNATION AS AN ETC

Section 214(e)(1) of the Act and section 54.201(d) of the Commission's rules provide that applicants for ETC designation must be common carriers that will offer all of the services supported by universal service, either using their own facilities or a combination of their own facilities and the resale of another carrier's services. Applicants also must commit to advertise the availability and rates of such services.¹⁸ As detailed below, Virgin Mobile satisfies each of the above-listed requirements.

A. Virgin Mobile is a Common Carrier

¹⁷ See *Cell Phones Provide Significant Economic Gains for Low-Income American Households: A Review of Literature and Data from Two New Surveys*, Nicholas P. Sullivan (April 2008).

¹⁸ See 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.201(d)(2).

Section 153(10) of the Act defines a common carrier as any entity “engaged as a common carrier for hire, in interstate or foreign communications by wire or radio”¹⁹ The Commission has determined on numerous occasions that resellers of mobile wireless services shall be treated as common carriers for regulatory purposes. As a reseller of wireless communications services, therefore, Virgin Mobile is a common carrier eligible for designation as an ETC.

B. Virgin Mobile Will Provide the Supported Services Through Resale

As described above, Virgin Mobile purchases wireless network services on a wholesale basis from Sprint Nextel. Virgin Mobile has pending a Petition for Forbearance from application of section 214(e)(1)(A) of the Act that requires ETCs to offer USF-supported services either using their own facilities or a combination of their own facilities and the resale of another carrier’s services (“Petition”).²⁰ As Virgin Mobile notes in its Petition, forbearance from the facilities requirement would enable Virgin Mobile to advance the deployment of discounted telecommunications services, greatly benefiting its low-income customers. The company requests that the Commission expeditiously approve the Petition to ensure that Virgin Mobile can rapidly deploy discounted telecommunications services to qualifying Tennessee consumers.

C. Virgin Mobile Offers All of the Required Services and Functionalities

Through its wholesale arrangement with Sprint Nextel, Virgin Mobile is able to provide all of the services and functionalities supported by the universal service program under section 54.101 of the Commission’s regulations in the State of Tennessee. Virgin Mobile, moreover, will make these services and functionalities available to any qualifying Tennessee customer.

1. Voice Grade Access to the Public Switched Telephone Network.

¹⁹ 47 U.S.C. § 153(10).

²⁰ See 47 U.S.C. § 214(e)(1)(A).

Virgin Mobile provides voice grade access to the public switched telephone network (“PSTN”) through the purchase of wholesale network services from Sprint Nextel. Virgin Mobile also offers its customers services at bandwidth rates between 300 and 3,000 MHz as required by the Commission’s regulations.²¹

2. Local Usage.

As part of the voice grade access to the PSTN, an ETC must provide local calling services to its customers. The FCC has determined that a carrier satisfies the local usage requirements when it offers customers rate plans containing varying amounts of local usage.²² Virgin Mobile offers a variety of rate plans that provide its customers with local usage capabilities included within the flat per minute or per monthly rate. Virgin Mobile also commits to complying with any minimum local usage requirements adopted by the FCC in the future.

3. Dual Tone Multi-Frequency Signaling or its Functional Equivalent

Virgin Mobile provides dual tone multi-frequency (“DTMF”) signaling to expedite the transmission of call set up and call detail information throughout its network. All wireless handsets offered for sale by the company are DTMF-capable.

4. Single-Party Service or its Functional Equivalent

“Single-party service” means that only one party will be served by a subscriber loop or access line during a telephone transmission. Virgin Mobile provides single party service to its customers for the duration of each telephone call, and does not provide multi-party (or “party-line”) services.

²¹ See 47 U.S.C. § 54.101(a)(1).

²² See e.g., *Farmers Cellular, Inc.*, 18 FCC Rcd 3848, 3852 (2003); *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc.*, 17 FCC Rcd 9589, 9593 (2002); *Western Wireless Corp., Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48, 52 (2000).

5. Access to Emergency Services

Virgin Mobile provides nationwide access to 911 emergency services for all of its customers. Virgin Mobile also complies with the Commission's regulations governing the deployment and availability of enhanced 911 compatible handsets.

6. Access to Operator Services

Virgin Mobile provides all of its customers with access to operator services.

7. Access to Interexchange Services

Virgin Mobile's service provides its customers with the ability to make interexchange, or long distance, telephone calls. Domestic long distance capabilities are included in Virgin Mobile's service with no additional charges as minutes are not billed separately for local or domestic long distance services.

8. Access to Directory Assistance

All Virgin Mobile customers are able to dial "411" to reach directory assistance services from their wireless handsets.

9. Toll Limitation for Qualifying Low-Income Consumers

Toll limitation allows customers to block the completion of outgoing long distance calls to prevent them from incurring significant long distance charges and risking disconnection. As described above, Virgin Mobile provides its wireless service on a prepaid, or pay-as-you-go, basis. Virgin Mobile's service, moreover, is not offered on a distance-sensitive basis and minutes are not charged separately for local or domestic long distance services. Customers also must specifically authorize access for international services, for which additional charges may apply. The nature of Virgin Mobile's service, therefore, mitigates any concerns that low-income

customers will incur significant charges for long distance calls resulting in disconnection of their service.

D. Advertising of Supported Services

Virgin Mobile will broadly advertise the availability and rates for the services described above using media of general distribution as required by section 54.201(d)(2) of the Commission's regulations.²³ The company currently advertises the availability of its services through newspapers, magazines, radio, the Internet and billboards. Virgin Mobile's third-party retail partners also heavily promote its services. These advertising campaigns have been highly effective in reaching low-income customers and promoting the availability of cost-effective wireless services to this neglected consumer segment.

Virgin Mobile will supplement these methods of communication to specifically advertise and promote the availability of its Lifeline offerings to qualifying customers throughout Tennessee. Virgin Mobile intends to distribute brochures and posters at various state and local social service agencies to inform customers of the availability of its Lifeline services. In addition, Virgin Mobile may market its Lifeline services through its Re*Generation pro-social program, which is a program that connects at-risk youth with young people who want to make a difference through partnerships with innovative not-for-profit organizations. The company also will heavily promote these offerings to its existing customers—many of whom may otherwise qualify for Lifeline—through email and text messages.

VI. DESIGNATION OF VIRGIN MOBILE AS AN ETC WOULD PROMOTE THE PUBLIC INTEREST

A. Goals of the Communications Act

²³ See 47 C.F.R. § 54.201.

One of the principal goals of the Act, as amended by the Telecommunications Act of 1996, is “to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies” to all citizens, regardless of geographic location or income.²⁴ There is no question that limited designation of Virgin Mobile as an ETC in Tennessee will promote the public interest by providing low-income Tennessee consumers with more affordable and higher quality wireless services. Many lower-income consumers have yet to reap the full benefits of the intensely competitive wireless marketplace. Whether because of financial constraints, poor credit or intermittent employment, these consumers often lack the countless choices available to most consumers. Designating Virgin Mobile as an ETC in Tennessee, therefore, will enable it to expand the availability of affordable telecommunications services to qualifying Tennessee consumers, leading to lower prices and increased choice.²⁵

The instant request for limited ETC designation must be examined in light of the Act’s goal of providing low-income consumers with access to telecommunications services. The primary purpose of universal service is to ensure that consumers—especially low-income consumers—receive affordable and comparable telecommunications services. Given this context, designating Virgin Mobile as an ETC would significantly benefit low-income Tennessee consumers eligible for Lifeline services—many of whom are the intended beneficiaries of universal service. The company’s participation in the Lifeline program also undoubtedly would increase opportunities for the company to serve Tennessee customers with appealing and affordable service offerings.

²⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

²⁵ See *IXC Forbearance Order*, 11 FCC Rcd at 20760.

Designation of Virgin Mobile as an ETC also would promote competition and spur other carriers to target low-income consumers with service offerings tailored to their needs, greatly benefiting this neglected consumer segment. Virgin Mobile will bring the same entrepreneurial spirit that has reinvigorated the wireless industry to eligible Tennessee Lifeline customers, helping to redefine the wireless experience for many low-income Tennessee consumers. Other carriers, therefore, will have the incentive to improve their existing service offerings and tailor service plans with terms and features that appeal to lower-income customers.

Finally, while Virgin Mobile has experienced success in deploying wireless services to low-income consumers, internal company analysis suggests that many low-income customers still intermittently discontinue service because of economic constraints. ETC designation in Tennessee would enable Virgin Mobile to offer appealing and affordable service offerings to low-income Tennessee customers to ensure that they are able to afford wireless services on a consistent and uninterrupted basis. Providing Virgin Mobile with the authority necessary to offer discounted Lifeline services to those most in danger of losing wireless service altogether undoubtedly promotes the public interest.

B. Impact on the Universal Service Fund

Virgin Mobile's request for designation as an ETC solely for Lifeline purposes would not unduly burden the USF or otherwise reduce the amount of funding available to other ETCs. The secondary role of Lifeline support with respect to overall USF expenditures is well documented. According to the Joint-Board's most recent monitoring report, Lifeline funding totaled approximately \$775 million in 2006 while high-cost program expenditures amounted to approximately \$4.1 billion—more than five times the amount of Lifeline funding.²⁶ Although

²⁶ See *Universal Service Monitoring Report*, CC Docket 98-202, Tables 2.2 and 3.1 (filed January 25, 2008).

many parties have raised concerns over the growth in the USF's high-cost program, the Lifeline program has triggered no similar outcry. Virgin Mobile understands the concerns over growth in high-cost expenditures and has participated in the Commission's proceedings addressing these issues.²⁷ Limited designation of Virgin Mobile as an ETC in Tennessee, however, raises no similar concerns and any incremental increases in Lifeline expenditures are far outweighed by the significant public interest benefits of expanding the availability of affordable wireless services to low-income Tennessee consumers.

VII. ANTI-DRUG ABUSE CERTIFICATION

Virgin Mobile certifies that no party to this Petition is subject to denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.²⁸

²⁷ See *Virgin Mobile ex parte*, CC Docket 96-45 (filed March 4, 2005).

²⁸ See Exhibit 2.

VIII. CONCLUSION

As discussed above, designation of Virgin Mobile as an ETC in the State of Tennessee accords with the requirements of section 214(e)(6) of the Act and is in the public interest.

WHEREFORE, for all of the foregoing reasons, Virgin Mobile respectfully requests that the Commission designate Virgin Mobile as an ETC in the State of Tennessee.

Respectfully submitted,

VIRGIN MOBILE USA, L.P.

A handwritten signature in black ink, appearing to read "Antoinette Cook Bush", is written over a horizontal line.

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EXHIBIT 1

**AFFIRMATIVE STATEMENT OF THE
TENNESSEE REGULATORY AUTHORITY**

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 11, 2003

IN RE:

APPLICATION OF ADVANTAGE CELLULAR
SYSTEMS, INC. TO BE DESIGNATED AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER

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DOCKET NO.
02-01245

ORDER

This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate and Director Pat Miller of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned in this docket, at the regularly scheduled Authority Conference held on January 27, 2003, for consideration of the *Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier* ("Application") filed on November 21, 2002.

Background

Advantage Cellular Systems, Inc. ("Advantage") is a commercial mobile radio service provider ("CMRS") seeking designation as an Eligible Telecommunications Carrier ("ETC") by the Authority pursuant to 47 U.S.C. §§ 214 and 254. In its *Application*, Advantage asserts that it seeks ETC status for the entire study area of Dekalb Telephone Cooperative, Inc., a rural cooperative telephone company. Advantage maintains that it meets all the necessary requirements for ETC status and therefore is eligible to receive universal service support throughout its service area.

The January 27, 2003 Authority Conference

During the regularly scheduled Authority Conference on January 27, 2003, the panel of Directors assigned to this docket deliberated Advantage's *Application*. Of foremost consideration was the issue of the Authority's jurisdiction. The panel unanimously found that the Authority lacked

jurisdiction over Advantage for ETC designation purposes.¹

This conclusion was implicitly premised on Tenn. Code Ann. § 65-4-104, which provides that:

The Authority has general supervisory and regulatory power, jurisdiction and control over all public utilities and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.

For purposes of Tenn. Code Ann. § 65-4-104, the definition of public utilities specifically excludes, with certain exceptions not relevant to this case, "[a]ny individual, partnership, copartnership, association, corporation or joint stock company offering domestic public cellular radio telephone service authorized by the federal communications commission."

The Authority's lack of jurisdiction over CMRS providers implicates 47 U.S.C. § 214(e), which addresses the provision of universal service. Where common carriers seeking universal service support are not subject to a state regulatory commission's jurisdiction, 47 U.S.C. § 214(e)(6) authorizes the Federal Communications Commission ("FCC") to perform the ETC designation.²

¹ This finding is not inconsistent with the Authority's decision in *In re: Universal Service Generic Contested Case*, Docket 97-00888, *Interim Order on Phase I of Universal Service*, pp. 53-57 (May 20, 1998), in which the Authority required intrastate telecommunications carriers to contribute to the intrastate Universal Service Fund including telecommunications carriers not subject to authority of the TRA. The decision in Docket No. 97-00888 was based primarily on 47 U.S.C. § 254(f) which authorizes states to adopt regulations not inconsistent with the Federal Communications Commission's rules on Universal Service and specifically requires every telecommunications carrier that provides intrastate telecommunications services to contribute to the preservation and advancement of universal service in that state. The *Interim Order* was issued prior to the effective date of 47 U.S.C. § 214(e)(6).

² 47 U.S.C. § 214(e)(6) states:

(6) Common carriers not subject to state commission jurisdiction

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

As a matter of "state-federal comity," the FCC requires that carriers seeking ETC designation "first consult with the state commission to give the state commission an opportunity to interpret state law."³ Most carriers that are not subject to a state regulatory commission's jurisdiction seeking ETC designation must provide the FCC "with an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation."⁴

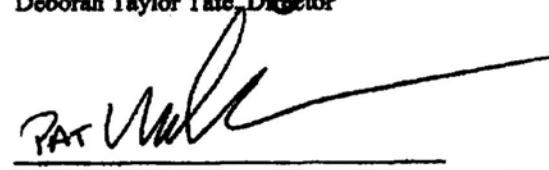
The panel noted that the FCC is the appropriate forum for Advantage to pursue ETC status pursuant to 47 U.S.C. § 214(e)(6). This Order shall serve as the above mentioned affirmative statement required by the FCC.

IT IS THEREFORE ORDERED THAT:

The Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier is dismissed for lack of subject matter jurisdiction.


Sara Kyle, Chairman


Deborah Taylor Tate, Director


Pat Miller, Director

³ *In the Matter of Federal-State Joint Bd. on Universal Service*, CC Docket No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 F.C.R. 12208, 12264, ¶ 113 (June 30, 2000).

⁴ *See id.* (The "affirmative statement of the state commission may consist of any duly authorized letter, comment, or state commission order indicating that it lacks jurisdiction to perform designations over a particular carrier.")

EXHIBIT 2
CERTIFICATION

Declaration of Virgin Mobile USA, L.P.

I, Peter Lurie, do hereby declare under penalty of perjury as follows:

1. I am the General Counsel and Co-Founder of Virgin Mobile USA, L.P., a Delaware Limited Partnership with its principal place of business at 10 Independence Blvd, Warren, NJ 07059.

2. I have read Virgin Mobile's Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee and confirm the information contained therein to be true and correct to the best of my knowledge.

2. To the best of my knowledge, the Petitioner referred to in the foregoing Petition, including all officers, directors, or persons holding five percent or more of the outstanding stock or shares (voting or non-voting) are not subject to denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.


3. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on April 25, 2008



Peter Lurie
General Counsel and Co-Founder

Subscribed and sworn before me
This 25th day of April 2008.



Notary Public
Notary Public - State of New Jersey
No. 2302431
Qualified in Middlesex County
My Commission Expires: July 2, 2008